

Article 81.

General Sentencing Provisions.

**§ 15A-1331. Authorized sentences; conviction.**

(a) The criminal judgment entered against a person in either district or superior court shall be consistent with the provisions of Article 81B of this Chapter and contain a sentence disposition consistent with that Article, unless the offense for which his guilt has been established is not covered by that Article.

(b) For the purpose of imposing sentence, a person has been convicted when he has been adjudged guilty or has entered a plea of guilty or no contest. (1977, c. 711, s. 1; 1993, c. 538, s. 12; 1994, Ex. Sess., c. 24, s. 14(b).)

**§ 15A-1331A.** Recodified as G.S. 15A-1331.1 by Session Laws 2012-194, s. 45(a), effective July 17, 2012.

**§ 15A-1331.1. Forfeiture of licensing privileges after conviction of a felony.**

(a) The following definitions apply in this section:

- (1) Licensing agency. – Any department, division, agency, officer, board, or other unit of State or local government that issues licenses for licensing privileges.
- (2) Licensing privilege. – The privilege of an individual to be authorized to engage in an activity as evidenced by the following licenses: regular and commercial drivers licenses, occupational licenses, hunting licenses and permits, and fishing licenses and permits.
- (3) Occupational license. – A licensure, permission, certification, or similar authorization required by statute or rule to practice an occupation or business. The term does not include a tax license issued under Chapter 105 of the General Statutes, Article 7 of Chapter 153A of the General Statutes, or Article 9 of Chapter 160A of the General Statutes.

(b) Upon conviction of a felony, an individual automatically forfeits the individual's licensing privileges for the full term of the period the individual is placed on probation by the sentencing court at the time of conviction for the offense, if:

- (1) The individual is offered a suspended sentence on condition the individual accepts probation and the individual refuses probation, or
- (2) The individual's probation is revoked or suspended, and the judge makes findings in the judgment that the individual failed to make reasonable efforts to comply with the conditions of probation.

(c) Whenever an individual's licensing privileges are forfeited under this section, the judge shall make findings in the judgment of the licensing privileges held by the individual known to the court at that time, the drivers license number and social security number of the individual, and the beginning and ending date of the period of time of the forfeiture. The terms and conditions of the forfeiture shall be transmitted by the clerk of court to the Division of Motor Vehicles, in accordance with G.S. 20-24 and to the licensing agencies specified by the judge in the judgment. A licensing agency, upon receiving notice from the clerk of court, shall require the individual whose licensing privileges were forfeited to surrender the forfeited license issued by the agency and shall not reissue a

license to that individual during the period of forfeiture as stated in the notice. Licensing agencies are authorized to establish procedures to implement this section.

(d) Notwithstanding any other provision of this section, the court may order that an individual whose licensing privileges are forfeited under this section be granted a limited driving privilege in accordance with the provisions of G.S. 20-179.3. (1994, Ex. Sess., c. 20, ss. 1, 5; 2012-194, s. 45(a).)

**§ 15A-1331.2. Prayer for judgment continued for a period of time that exceeds 12 months is an improper disposition of a Class B1, B2, C, D, or E felony.**

The court shall not dispose of any criminal action that is a Class B1, B2, C, D, or E felony by ordering a prayer for judgment continued that exceeds 12 months. If the court orders a prayer for judgment continued in any criminal action that is a Class B1, B2, C, D, or E felony, the court shall include as a condition that the State shall pray judgment within a specific period of time not to exceed 12 months. At the time the State prays judgment, or 12 months from the date of the prayer for judgment continued order, whichever is earlier, the court shall enter a final judgment unless the court finds that it is in the interest of justice to continue the order for prayer for judgment continued. If the court continues the order for prayer for judgment continued, the order shall be continued for a specific period of time not to exceed 12 months. The court shall not continue a prayer for judgment continued order for more than one additional 12-month period. (2012-149, s. 11; 2012-194, s. 45(e).)

**§ 15A-1332. Presentence reports.**

(a) Presentence Reports Generally. – To obtain a presentence report, the court may order either a presentence investigation as provided in subsection (b) or a presentence commitment for study as provided in subsection (c).

(b) Presentence Investigation. – The court may order a probation officer to make a presentence investigation of any defendant. The court may order the investigation only after conviction unless the defendant moves for an earlier presentence investigation. A motion for an earlier presentence investigation may be addressed only to the judge of the session of court for which the defendant's case is calendared or, if the case has not been calendared, to a resident superior court judge if the case is in the jurisdiction of the superior court or to the chief district court judge if the case is in the jurisdiction of the district court. When the court orders a presentence investigation, the probation officer must promptly investigate all circumstances relevant to sentencing and submit either a written report or an oral report either on the record or with defense counsel and the prosecutor present. The report may include sentence recommendations only if such recommendations are requested by the court.

(c) Presentence Commitment for Study. – When the court desires more detailed information as a basis for determining the sentence to be imposed than can be provided by a presentence investigation, the court may commit a defendant to the Division of Adult Correction and Juvenile Justice of the Department of Public Safety for study for the shortest period necessary to complete the study, not to exceed 90 days, if that defendant has been charged with or convicted of any felony or a Class A1 or Class 1 misdemeanor crime or

crimes for which he may be imprisoned for more than six months and if he consents. The period of commitment must end when the study is completed, and may not exceed 90 days. The Division must conduct a complete study of a defendant committed to it under this subsection, inquiring into such matters as the defendant's previous delinquency or criminal experience, his social background, his capabilities, his mental, emotional and physical health, and the availability of resources or programs appropriate to the defendant. Upon completion of the study or the end of the 90-day period, whichever occurs first, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety must release the defendant to the sheriff of the county in which his case is docketed. The Division must forward the study to the clerk in that county, including whatever recommendations the Division believes will be helpful to a proper resolution of the case. When a defendant is returned from a presentence commitment for study, the conditions of pretrial release which obtained for the defendant before the commitment continue until judgment is entered, unless the conditions are modified under the provisions of G.S. 15A-534(e). (1977, c. 711, s. 1; 1981, c. 377, s. 1; 1993, c. 538, s. 13; 1994, Ex. Sess., c. 24, s. 14(b); 1995, c. 507, s. 19.5(e); 2011-145, s. 19.1(h); 2017-186, s. 2(fff).)

**§ 15A-1333. Availability of presentence report.**

(a) Presentence Reports and Sentencing Services Information Not Public Records. – A written presentence report, the record of an oral presentence report, and information obtained in the preparation of a sentencing plan by a sentencing services program under Article 61 of Chapter 7A are not public records and may not be made available to any person except as provided in this section.

(b) Access to Reports. – The defendant, his counsel, the prosecutor, or the court may have access at any reasonable time to a written presentence report or to any record of an oral presentence report. Access to a sentencing plan and information obtained in the preparation of a sentencing plan shall be in accordance with the comprehensive sentencing services program plan developed pursuant to G.S. 7A-774.

(c) Expunging Reports. – On motion of the defendant, the court in its discretion may order a written presentence report, the record of an oral presentence report, or a sentencing plan expunged from the court record. (1977, c. 711, s. 1; 2000-67, s. 15.9(c).)

**§ 15A-1334. The sentencing hearing.**

(a) Time of Hearing. – Unless the defendant waives the hearing, the court must hold a hearing on the sentence. Either the defendant or the State may, upon a showing which the judge determines to be good cause, obtain a continuance of the sentencing hearing.

(b) Proceeding at Hearing. – The defendant at the hearing may make a statement in his own behalf. The defendant and prosecutor may present witnesses and arguments on facts relevant to the sentencing decision and may cross-examine the other party's witnesses. No person other than the defendant, his counsel, the prosecutor, and one making a presentence report may comment to the court on sentencing unless called as a witness by the defendant, the prosecutor, or the court. Formal rules of evidence do not apply at the hearing.

(c) Sentence Hearing in Other District. – The judge who orders a presentence report may, in his discretion, direct that the sentencing hearing be held before him in another county or another district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined

in G.S. 7A-41.1, as the case may be, during or after the session in which the defendant was convicted. If sentence is imposed in a county other than the one where the defendant was convicted, the clerk of the county where sentence is imposed must forward the records of the sentencing proceeding to the clerk of the county of conviction.

(d) Sentencing in Capital Cases. – Sentencing in capital cases is governed by Article 100 of this Chapter.

(e) Procedure Applicable when Certain Prior Convictions May Be Used. – The procedure in G.S. 15A-980 governs if the State seeks to use a prior conviction in a sentencing hearing. (1977, c. 711, s. 1; 1983, c. 513, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 66.)

**§ 15A-1335. Resentencing after appellate review.**

When a conviction or sentence imposed in superior court has been set aside on direct review or collateral attack, the court may not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence less the portion of the prior sentence previously served. This section shall not apply when a defendant, on direct review or collateral attack, succeeds in having a plea of guilty vacated. (1977, c. 711, s. 1; 2013-385, s. 3.)

**§ 15A-1336. Compliance with criminal case firearm notification requirements of the federal Violence Against Women Act.**

The Administrative Office of the Courts, in cooperation with the North Carolina Coalition Against Domestic Violence and the North Carolina Governor's Crime Commission, shall develop a form to comply with the criminal case firearm notification requirements of the Violence Against Women Act of 2005. (2007-294, s.2)

**§ 15A-1337. Reserved for future codification purposes.**

**§ 15A-1338. Reserved for future codification purposes.**

**§ 15A-1339. Reserved for future codification purposes.**

**§ 15A-1340. Reserved for future codification purposes.**